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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,017	06/01/2005	Mark Azevedo	245-67314-02	2143
24197 7590 06/20/2007 KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND, OR 97204				
			EXAMINER WAX, ROBERT A	
			ART UNIT 1656	PAPER NUMBER
			MAIL DATE 06/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/537,017

Applicant(s)

AZEVEDO ET AL.

Examiner

Robert A. Wax

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 6, 7, 9, 13-15, 22, 24, 25, 30-40, 45 and 48-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1, 6, 7, 9, 13-15, 22, 24, 25, 30-40, 45 and 48-50 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1 and 49 and 22, 24 and 25, *Pseudomonas fluorescens* Biotype B E34, for example, NRRL #B-30481 and method of inhibiting or arresting weed germination in a growth medium comprising applying the strain.

Group II, claims 1 and 49 and 22, 24 and 25, *Pseudomonas fluorescens* Biotype C WH19, for example, NRRL #B-30484 and method of inhibiting or arresting weed germination in a growth medium comprising applying the strain.

Group III, claims 1 and 49 and 22, 24 and 25, *Pseudomonas fluorescens* Biotype C WH6, for example, NRRL #B-30485 and method of inhibiting or arresting weed germination in a growth medium comprising applying the strain.

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Group IV, claims 1 and 49 and 22, 24 and 25, *Pseudomonas putida* Biotype B AH4, for example, NRRL #B-30482 and method of inhibiting or arresting weed germination in a growth medium comprising applying the strain.

Group V, claims 1 and 49 and 22, 24 and 25, *Pseudomonas putida* Biotype B AD31, for example, NRRL #B-30483 and method of inhibiting or arresting weed germination in a growth medium comprising applying the strain.

Group VI, claims 6, 7, 9, 30, 31, 40, 45 and 50 GAF produced by *Pseudomonas fluorescens* Biotype B E34, composition thereof, method of making GAF comprising culturing the strain and kit comprising GAF.

Group VII, claims 6, 7, 9, 30, 31, 40, 45 and 50 GAF produced by *Pseudomonas fluorescens* Biotype C WH19, composition thereof, method of making GAF comprising culturing the strain and kit comprising GAF.

Group VIII, claims 6, 7, 9, 13, 14, 15, 22, 24, 25, 30, 31, 32-39, 40, 45 and 50 GAF produced by *Pseudomonas fluorescens* Biotype C WH6, DNA of SEQ ID Nos.: 2, 7 or 10, GAF protein seqidnos 3, 4, 8, 11, 12, 13, compositions thereof, method of making GAF comprising culturing the strain, method of inhibiting or arresting weed germination comprising applying GAF protein SEQ ID Nos.: 3, 4, 8, 11, 12, 13 and kit comprising GAF.

Group IX, claims 6, 7, 9, 30, 31, 40, 45 and 50 GAF produced by *Pseudomonas putida* Biotype B AH4, compositions thereof, method of making GAF comprising culturing the strain, kit comprising GAF.

Group X, claims 6, 7, 9, 30, 31, 40, 45 and 50 GAF produced by *Pseudomonas putida* Biotype B AD31, compositions thereof, method of making GAF comprising culturing the strain, kit comprising GAF.

Group XI, claim 48, method of using GAF produced by *Pseudomonas fluorescens* Biotype B E34 to investigate regulation of seed germination.

Group XII, claim 48, method of using GAF produced by *Pseudomonas fluorescens* Biotype C WH19 to investigate regulation of seed germination.

Group XIII, claim 48, method of using GAF produced by *Pseudomonas fluorescens* Biotype C WH6 to investigate regulation of seed germination.

Group XIV, claim 48, method of using GAF produced by *Pseudomonas putida* Biotype B AH4 to investigate regulation of seed germination.

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Group XV, claim 48, method of using GAF produced by *Pseudomonas putida* Biotype AD31 to investigate regulation of seed germination.

Furthermore, in Group VIII the presence of multiple polypeptide sequences and polynucleotide sequences, each with a different SEQ ID NO: allows for a variety of patentably distinct products. Depending on the sequence of each polypeptide and polynucleotide, the characteristics of the resulting molecule will vary in regards to structure and function. Each one of these polypeptides is capable of eliciting a specific immune response and can be used to produce a specific antibody; also each one of the mentioned polynucleotides is capable of hybridizing to different probes and is capable of encoding a characteristically different peptide in regards to structure and activity. Therefore these polypeptides and polynucleotides are patentably distinct absent factual evidence to the contrary. Thus, If Group VIII is elected then further election between DNA SEQ ID Nos.: 2, 7 and 10 and between GAF protein SEQ ID Nos.: 3, 4, 8, 11, 12 and 13 is required.

Applicant is advised that a reply to this requirement must include an identification of SEQ ID NO: that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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2. The inventions listed as Groups I-XV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: These Groups lack unity a priori because they represent different classes of inventions. When this is the case a product is examined with a process of use of the product and a process of making the product. The groups have been divided accordingly. Groups I-V are directed to different strains of bacteria and the first method of use of each. Groups VI-X are directed to GAF produced by each bacterial strain, composition thereof, method of making GAF comprising culturing the strain and kit comprising GAF. Group VIII is further divided because it includes DNA encoding the GAF and specific GAF sequences from strains WH6-1, WH6-2 and WH6-3. Groups XI-XV are directed to a second method of use of each of the first products

3. A telephone call was not made to request an oral election to the above restriction requirement in view of the complexity of the holding of lack of unity.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not

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distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Wax whose telephone number is (571) 272-0623. The examiner can normally be reached on Monday through Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on (571) 272-0931. The fax phone



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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Robert A. Wax', is positioned above the printed name and title.

Robert A. Wax  
Primary Examiner  
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